

WEBINAR

WEDNESDAYS



Wednesday, September 15, 2021

Immigration Relief Tools for Prosecutors: U Visas, T Visas, and Continued Presence

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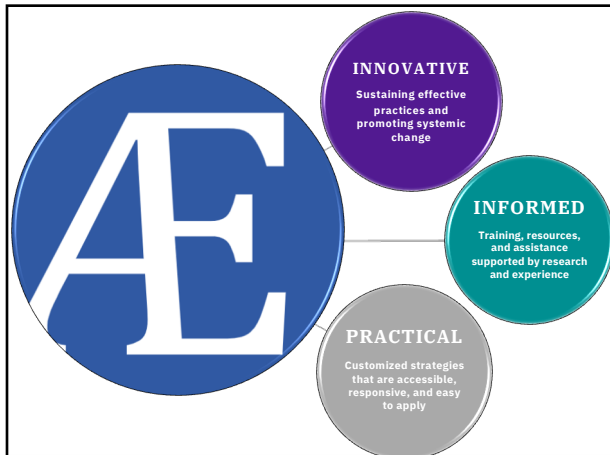
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What We Do	
<p>Resources</p> <p>Create, research, and curate publications, statutory and case law compilations, and other resources that strengthen prosecution practices</p>	<p>Consultations</p> <p>Offer on-demand 24/7 consultations with our seasoned prosecutors to answer case-specific inquiries, discuss strategy, conduct research, and recommend data-driven solutions</p>
<p>Training Events</p> <p>Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals</p>	<p>Partnerships & Initiatives</p> <p>Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training</p>

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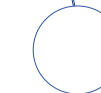
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Objectives



Articulate the differences between the U Visa, T Visa, and Continuing Presence Status

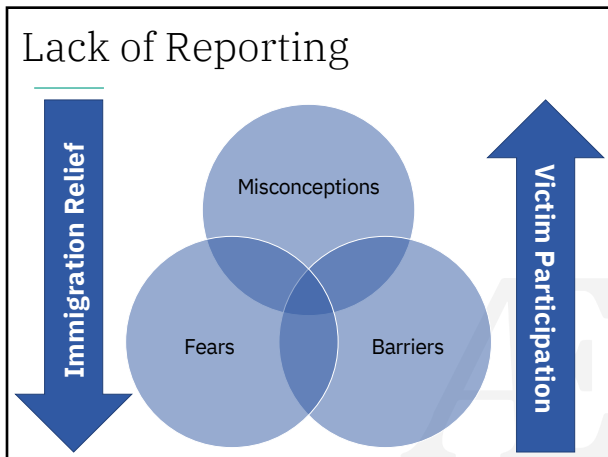


Utilize immigration relief tools to enhance victim participation in the criminal justice system

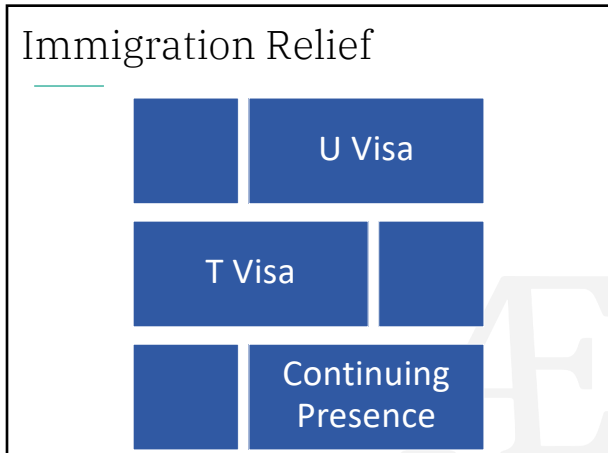


Promote victim safety by certifying that an individual is a victim of a qualifying offenses

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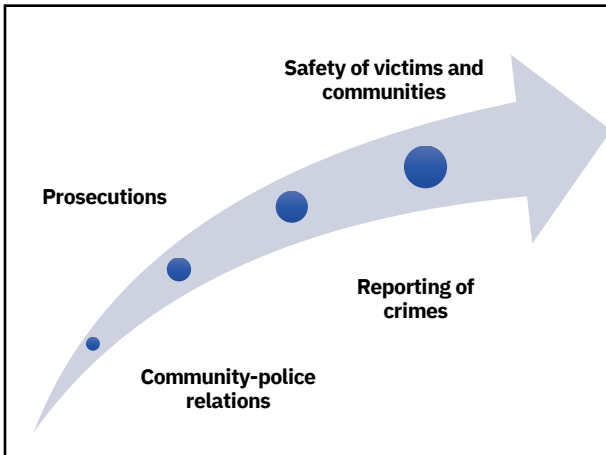


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Legislative Intent

- No one in the U.S. should be a victim of crime, especially violent crime
- Offenders prey upon the most vulnerable in our communities, often immigrants
- We want crimes reported to police
 - Everyone in the U.S. deserves to be safe
 - Offenders that victimize the most vulnerable must be held accountable

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U Visa Facts

- Only 10,000/year can be granted
- If granted, U Visa allows for a 4 year stay
- Some U Visa holders will qualify for lawful permanent residency (LPR)
- Path to citizenship is possible, after LPR for 5 years + proof of good moral character
- At multiple stages, background checks are conducted and biometrics are analyzed

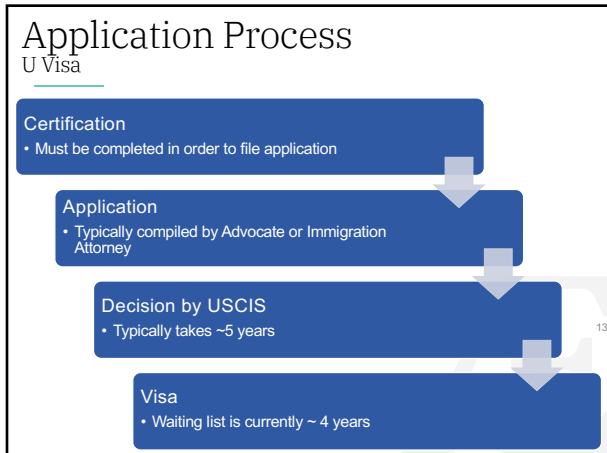
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U Visa Requirements

Victim	Helpful	Harm
<ul style="list-style-type: none"> • Qualifying criminal activity • Possesses information about the crime • Criminal activity occurred in U.S. or violated U.S. law 	<ul style="list-style-type: none"> • Has been, is being, or is likely to be • Detection, investigation, prosecution, conviction, or sentencing 	<ul style="list-style-type: none"> • Substantial physical or mental abuse as a result

"U Visa Law Enforcement Resource Guide", DHS, 2019,
https://www.dhs.gov/sites/default/files/publications/19_0731_uscis_u-visa-law-enforcement-resource-guide.pdf

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Certification

- Victim must submit signed certification to apply for a U Visa
- Law enforcement certification is just one part of the overall process
- Signing the certification does not guarantee any form of immigration relief
- Can be “revoked”

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U Visa - Certification

Part 6. Certification

I am the head of the agency listed in **Part 2**, or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in **Part 1** is or was a victim of one or more of the crimes listed in **Part 3**. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)

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Who can certify?

Designated officials from a "law enforcement agency"

- Federal, state, and local
- Law enforcement
- Prosecutors
- Judges, Magistrates, Commissioners
- Departments of Labor (DOL)
- Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government agencies with investigatory powers

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U Visa - Helpfulness

Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

1. Does the victim possess information concerning the criminal activity listed in **Part 3**? ☐ Yes ☐ No
2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above? ☐ Yes ☐ No

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Qualifying Criminal Activity

Domestic Violence	Kidnapping	False imprisonment
Sexual Assault	Abduction	Blackmail
Rape	Trafficking	Extortion
Incest	Involuntary servitude	Witness tampering
Prostitution	Slave trade	Obstruction of justice
Torture	Being held hostage	Perjury
Female genital mutilation	Peonage	Stalking
Felonious assault	Fraud in foreign labor contracting	Manslaughter

Attempt, conspiracy or solicitation to commit crime or similar activity

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Making Determination

- Certifying agency determines “helpfulness”
- Helpfulness can include:
 - Calling 911
 - Providing a description of offender
 - Allowing photographs to be taken
 - Giving information about the offender’s whereabouts
 - Statement about prior bad acts

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Not Required

- Conviction
- Charges filed
- Offender arrested
- Testimony at trial
- Necessary witness
- Within Statute of Limitations
- Offender is identified
- Offender alive



Victim
Centered

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Hypothetical #1

What if an immigrant victim reports being a victim of domestic violence and the offender is deported before s/he can be arrested?

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Hypothetical #2

What if an immigrant victim of sexual assault cannot identify the offender, but gives a physical description and submits to a sexual assault forensic exam?

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Hypothetical #3

What if a victim of armed robbery testifies at the trial of the offender, but the offender is convicted of a lesser offense?

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Hypothetical #4

What if a victim of trafficking is recovered during a sting operation and she provides a statement, but does not testify at trial?

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U Visa – Ongoing Cooperation

Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above?

☐ Yes ☐ No

If you answer "Yes" to **Item Numbers 1. - 3.**, provide an explanation in the space below. If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**

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"Unreasonably Refused"

- Provide explanation
- Still can certify that applicant is a victim of qualifying offense and that they were helpful at one point
- USCIS will provide applicant the opportunity to explain
- USCIS makes the ultimate decision

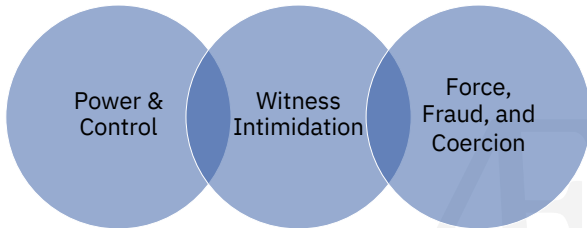
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Reasons for Refusal

- Fear
- Threats or intimidation
- Family pressure
- Family unity
- Financial
- Known v. unknown
- Victim-offender dynamics

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Considerations



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T Visa Facts

- 5,000 T Visas allowed per year
- For victims of severe forms of human trafficking
- Issued by the USCIS
- Allows victim to reside in the U.S. for 4 years
 - Employment authorization
 - Derivative T Visas for certain relatives
- Possibility of adjustment of status to permanent resident at end of 3 years

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Requirements

- Applicant is a victim of severe form of trafficking (AKA meets federal definition)
- Victim is in the U.S. because of trafficking
 - Responds to “reasonable requests for collaboration” with investigation
 - Hardship upon return to home country

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Trauma Exception

- At USICS' discretionary, they may issue T Visa without cooperation
 - Victim unable to cooperate due to physical or psychological trauma
- Application must include an affirmative statement from victim
 - Describing trauma
 - Encouraged to provide evidence; *e.g.*, letter from professional who can attest to the victim's mental state

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T Visa Resource Guide

U and T Visa Law Enforcement Resource Guide

for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies



https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf

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Continued Presence

- Temporary immigration status provided to victims of trafficking who are "sponsored" by federal law enforcement
- LE initiates application immediately after identifying victim; cooperation is not required
- Continuing Presence (CP) is granted for 2 years; can be renewed
- Does not guarantee any of form of long term immigration relief
- Can be revoked

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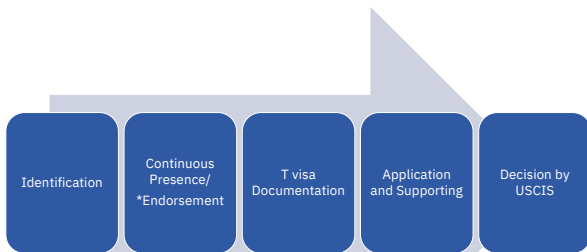
Continued Presence, Cont'd.

- Upon approval by Dept. of Health and Human Services
 - Allows victim to access federal and state benefits
 - Work authorization
 - Cooperation is required to access these benefits

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Process

Continued Presence and T Visa



Typical length ~6 months

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Prevention • Protection • Prosecution • Partnership

Center for Countering Human Trafficking

Continued Presence Resource Guide
for submitting law enforcement agencies and civil attorneys
July 2021

https://www.ice.gov/sites/default/files/documents/CCHT%20CP%20Resource%20Guide%20Jul%202021_7-28_FINAL_4.2%20-%20Signed.pdf

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Have you have handled a case where the victim had applied for or received a U or T Visa or Continued Presence?

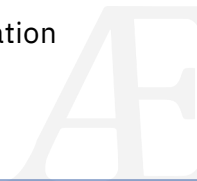


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Disclosures

"within the State's possession or control"

- Certification form
- Communication with immigration attorney or advocate
- Accompanying documentation



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PROS

CONS

Establish trust

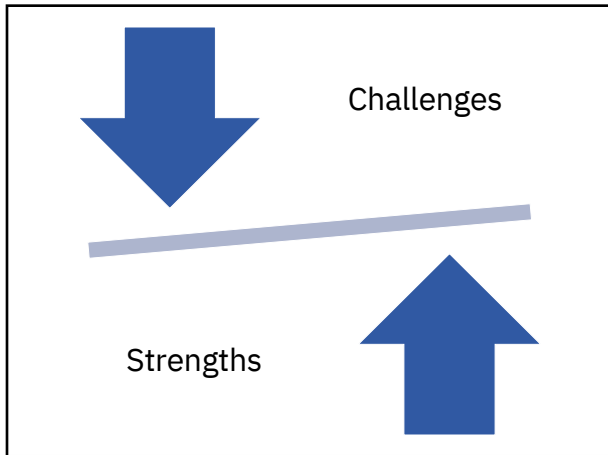
Build rapport

Protect from offender

Protect from deportation

Accusation that victim is lying for immigration benefit

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Analyze Case

Victim Selection	• Did the offender chose the victim because of a real or perceived vulnerability?
Criminal Act	• Did the offender use the victim's immigration status to commit a criminal act?
Escape Detection	• Was the victim prevented from reporting the crime to police because of their immigration status?

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Excluding Evidence

Arguments	Examples
• Irrelevant	• Child victims
• Probative value is substantially outweighed by potential prejudice	• Time lapse between reporting and applying

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Furthermore, the record does not contain evidence that M[] or any member of her family had unauthorized status. Although a U-Visa may provide relief from removal for an unauthorized alien, [it does] not require that an alien be unauthorized in order to apply...

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And, even if the victims in this case were unauthorized and such evidence did have some probative value, the trial court could implicitly conclude, as argued by the state...

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that any probative value would have been outweighed by the risk of unfair prejudice and confusion of the issues stemming from a collateral mini-trial on the victims' immigration status. See Ariz. R. Evid. 403. We find no abuse of discretion.

Buccheri-Bianca v. Ryan, No. CV1500229TUCRMBPV, 2017 WL 5905642, at *10 (D. Ariz. Nov. 1, 2017), report and recommendation adopted, No. CV-15-00229-TUCRM, 2017 WL 5885524 (D. Ariz. Nov. 29, 2017)

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Educate



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State v. Olvera-Guillen

No. CA2007-05-118, 2008 WL 4616310 *5 (Ohio Ct. App. Oct. 20, 2008)

- Court allowed defense to call an expert witness to explain the U Visa process
- Prosecutor's comments not condoned by court, but did not lead to a reversal:

"You know there is a very good reason why that U-visa program is in place because without it, people like him, can have free rein. They rape, pillage and plunder a whole underclass of people in this country simply because they are illegal aliens, knowing full well that they in their perpetual fear factor and their state of paranoia are not going to go running to the police."

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Prior Consistent Statement

Ariz. R. Evid. 801

(d) Statements That Are Not Hearsay

...

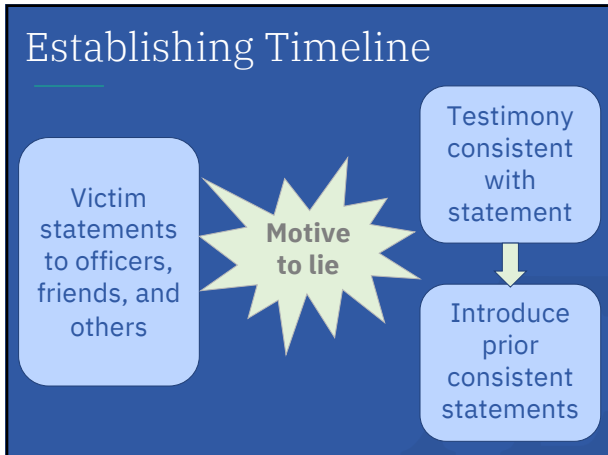
(1) A *Declarant-Witness's Prior Statement*. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

...

(B) is consistent with the declarant's testimony and is offered:

- (i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
- (ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground..

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